

**your legal rights at
forbes convergence
30 august 2005**



this was created on 25 August 2005. it is not legal advice, it is legal information. if you need any legal advice or assistance on the days of the protest, contact legal observers 0422 644 363

Sydney Harbour Foreshore Authority Act 1998

The Sydney Harbour Foreshore Authority Act 1998 was introduced to strengthen the police powers around the Sydney Harbour Foreshore Area, the area currently consists of land stretching from East Balmain to Elizabeth Bay, the boundary line hits the foreshore, so may extend to the shoreline of these harbour areas.

What's the deal with protest and the Sydney Harbour Foreshore?

We all have a right to protest but the Act has some power which may hinder this right. The Act states that it is an offence to hold a public assembly that is not authorised.¹ A public assembly is considered

- *an organized assembly of persons for the purposes of holding a meeting, procession or performance, or a sporting event.*²

Authorization from the Sydney Harbour Foreshore Authority must be obtained to hold this public assembly.³ Although this part of the Act does not explicitly prohibit a protest convergence, the nature of the protest may fall within this definition.

Can the Authority close off areas of the Foreshore?

The Authority may close parts of the Sydney Harbour Foreshore from the public. This closure will be symbolized through the use of buoys, barriers or signs.⁴ Persons may not enter these areas unless authorization has been obtained from the Sydney Harbour Foreshore Authority.⁵

When can they ask for my identification?

If you are approached by a police officer or ranger who suspects on reasonable grounds that you have committed an offence against this regulation, you may be required to state your full name and address.⁶ It is an offence not to provide your name and address without a reasonable excuse. Remember, the police must warn you that failure to comply with this direction will result in an offence.⁷ If the police officer or ranger asks for your details, remember to record their details down as well, such as their name and rank.

Are the police or other authorized officers empowered to move me on?

The regulation allows persons to be removed if that person:

- *causes annoyance or inconvenience to other persons in a public area;*⁸
- *contravenes any provision of this regulation in a public area;*⁹
- *trespasses on any part of a public area closed to the public*¹⁰

and it is an offence not to leave when requested by a ranger or a police officer.

If a person refuses to comply with this direction after first being warned, you may be removed from the area by a police officer or ranger. Moreover, a ranger or police officer may use reasonable force to effect your removal.¹¹

What if I bring something to the harbour foreshore that they think obstructs the area?

In this Sydney Harbour Foreshore area, a police officer or ranger has the power to remove anything that they consider 'obstructs or encroaches on a public area'. This may be ordered by the Authority, police officer or ranger. The authorized officer will use their discretion to determine if an object 'obstructs' or 'encroaches', no definition is provided for in the Act. If this removal occurs, the Authority is entitled to recover costs for its removal from the person who caused or was operating the encroachment or obstruction. However, the Authority, police officer or ranger may not remove objects that have been authorised by the Authority to be used in that area.¹²

The other stuff...

The Authority prevents the following activities being carried out in the Sydney Harbour Foreshore Area. It is an offence to operate a radio, television, record player or musical instrument in a manner that 'unduly interferes with the amenity of the area'.¹³ It is an offence to camp or erect any tent or temporary structure.¹⁴ It is an offence to climb any tree, sculpture, decoration, flagpole or other fixture or damage these objects.¹⁵ As well as this it is an offence to damage, destroy or remove any building or structure.¹⁶

Special Events

The Sydney Harbour Foreshore Authority may limit the number of persons entering the area; close parts of the Sydney Harbour Foreshore or charge admission to public areas for the purpose of a special event or activity.¹⁷



endnotes

- ¹ Sydney Harbour Foreshore Authority Regulation 1999 cl5
- ² Sydney Harbour Foreshore Authority Regulation 1999 cl5(1)(a)
- ³ Sydney Harbour Foreshore Authority Regulation 1999 cl5(1)-(3)
- ⁴ Sydney Harbour Foreshore Authority Regulation 1999 cl7
- ⁵ Sydney Harbour Foreshore Authority Regulation 1999 cl7
- ⁶ Sydney Harbour Foreshore Authority Regulation 1999 cl 12(1)
- ⁷ Sydney Harbour Foreshore Authority Regulation 1999 cl 12 (2)-(3)
- ⁸ Sydney Harbour Foreshore Authority Regulation 1999 cl 13(1)(a)
- ⁹ Sydney Harbour Foreshore Authority Regulation 1999 cl 13(1)(b)
- ¹⁰ Sydney Harbour Foreshore Authority Regulation 1999 cl 13(1)(c)
- ¹¹ Sydney Harbour Foreshore Authority Regulation 1999 cl 13(2)-(4)
- ¹² Sydney Harbour Foreshore Authority Regulation 1999 cl 14
- ¹³ Sydney Harbour Foreshore Authority Regulation 1999 cl 4(i)
- ¹⁴ Sydney Harbour Foreshore Authority Regulation 1999 cl 4(j)-(k)
- ¹⁵ Sydney Harbour Foreshore Authority Regulation 1999 cl 4(m) & cl 4(s)
- ¹⁶ Sydney Harbour Foreshore Authority Regulation 1999 cl 4(t)
- ¹⁷ Sydney Harbour Foreshore Authority Regulation 1999 cl 8(3)

Sydney Opera House Trust Act 1961

Recently, the State Government made amendments to this Act in response to the painting of the 'no war slogan' on the Opera House. The Sydney Harbour Foreshore Act does not include the Sydney Opera House in its legislative boundary; therefore we must make reference to this Act as well. The Act covers the Sydney Opera House building and the area of land surrounding this building, its operation ending at the boundary of the Royal Botanic Gardens.¹

The Sydney Opera House is coordinated by a body known as the Sydney Opera House Trust.²

The following provisions all refer to the power of authorized officers, for the purposes of this Act an authorized officer is a police officer; the Chief Executive Officer of the Opera House and a person that has been designated as an authorized officer by the Chief Executive Officer.³

What can the police do to stop me entering the Opera House?

The Sydney Opera House Trust can prevent persons from entering parts of the area through the use of barriers and notices.⁴ If a person enters the Opera House at this time they may be found guilty of an offence.

Also, a person found trespassing on the Opera House premises may be found guilty of an offence.⁵ Generally, a person is held to be a trespasser if they enter another person's property without permission.

Further, it is an offence to:

- cause damage to the Opera House⁶
- seriously disrupt the operations of the Opera House⁷
- commit any offence punishable by imprisonment or arising under the *Summary Offences Act 1988*.⁸

Even if these acts do not end up occurring, it's an offence for intending to commit them.⁹ The maximum penalty for these offences is imprisonment for a term of seven years.¹⁰

Moreover, it is an offence to intentionally or recklessly cause damage to the Opera House, or attempt to carry out such Acts.¹¹ The maximum penalty is imprisonment for five years.¹²

When can they ask for my identification?

The Sydney Opera House Trust By-Law also empowers the police to ask for your name and address if you have done or about to contravene parts of the Sydney Opera House Trust By-Law or Act, you must receive a warning that failure to comply with this request is an offence before you can be arrested.²⁷

An authorized officer may take a photograph of a person they suspect is contravening or has contravened parts of the Sydney Opera House Trust By-Law or Act.²⁸

Do any of these authorized officers have the right to search me?

A person entering the opera house may be required to undergo a search to ensure the 'safety and security of the premises'²⁹. An authorized officer may conduct a search in the following ways:

- by electronic means³⁰
- a search of article's in that person's possession.³¹
- a request that you remove your overcoat, coat or jacket or similar article of clothing and any gloves, shoes and hat (or other headwear)³²
- a search of a person's vehicle if that was their method of entrance.³³

The right of an authorized officer to search you is not restricted to entrance of the Opera House and may occur at any time whilst you are in the Opera House.³⁴

Are the police or other authorized officers empowered to move me on?

The police have very strong powers to move people on from the Opera House premises, more than what is authorised in the *Summary Offences Act 1988* and the *Law Enforcement (Powers and Responsibilities) Act 2002*. Therefore the police can move you on if it is considered that:

- you are contravening or have contravened a provision of the by law or you are committing or have committed an offence at the Opera House¹⁹
- a person has refused a search on entering the Opera House²⁰
- a person is causing annoyance or inconvenience, behaving in an offensive manner, or a manner likely to endanger another person²¹
- a person is about to contravene or commit an offence under the By-Law or Act.²²

Failure to comply with this direction allows the police to use reasonable force to effect your removal.²³ This is distinct from the general move on powers as the police normally have to give you two warnings before requiring you to move on, tell you their rank and are not permitted to use reasonable force to move you on.

If an authorized officer directs you to leave the Opera House, they may also ban you from re-entering the opera house for a period up to three months.²⁴ A ban will take effect upon receipt of a written notice stating that you are banned from the Opera House for a certain length of time.²⁵ If you re-enter the Opera House whilst banned, you may receive a subsequent ban extending the initial prohibition to 12 months.²⁶

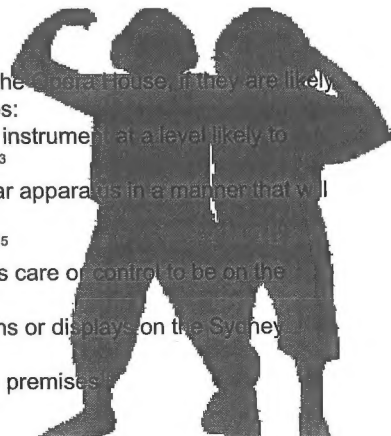
The other stuff....

It is an offence to participate in the following activities whilst on the Opera House, if they are likely to 'cause annoyance or inconvenience' to others on the premises:

- operate a radio, cassette, audio player or play a musical instrument at a level likely to cause annoyance to or inconvenience to other persons.¹³
- ride or use a bicycle, skateboard, roller skates or a similar apparatus in a manner that will cause annoyance to other persons.¹⁴
- operate or use a loudspeaker or public address system.¹⁵
- allow any animal, reptile or bird that is under the person's care or control to be on the premises¹⁶

It is an offence to deface, damage, obscure or interfere with signs or displays on the Sydney Opera House premises.¹⁷

It is an offence to moor a vessel to any part of the Opera House premises



endnotes

¹ The Act states the following: 'Opera House premises means the whole of the land comprised in Lot 4, Deposited Plan 787933, and Lot 5, Deposited Plan 775888, and includes any building situated on that land'. Sydney Opera House Trust By-Law 1998, cl 3

² Sydney Opera House Trust By-Law 1998 cl 5

³ Sydney Opera House By-Law 1998 cl 3

⁴ Sydney Opera House By-Law 1998 cl1A

⁵ Sydney Opera House Trust Act 1961 s28A

⁶ Sydney Opera House Trust Act 1961 s28B(a) and s28C

⁷ Sydney Opera House Trust Act 1961 s28B(b)

⁸ Sydney Opera House Trust Act 1961 s28B(c)

⁹ Sydney Opera House Trust Act 1961 s28B

¹⁰ Sydney Opera House Trust Act 1961 s28B

¹¹ Sydney Opera House Trust Act 1961 s28C

¹² Sydney Opera House Trust Act 1961 s28C and s28D

¹³ Sydney Opera House Trust By-Law 1998 cl11(1)(a)

¹⁴ Sydney Opera House Trust By-Law 1998 cl11(1)(b)

¹⁵ Sydney Opera House Trust By-Law 1998 cl11(1)(c)

¹⁶ Sydney Opera House Trust By-Law 1998 cl11(1)(d)

¹⁷ Sydney Opera House Trust By-Law 1998 cl14

¹⁸ Sydney Opera House Trust By-Law 1998 cl15

¹⁹ Sydney Opera House Trust By-Law 1998 cl16(3)(a)

²⁰ Sydney Opera House Trust By-Law 1998 cl16(3)(b)

²¹ Sydney Opera House Trust By-Law 1998 cl16(3)(c)

²² Sydney Opera House Trust By-Law 1998 cl16(3)(d)

²³ Sydney Opera House Trust By-Law 1998 cl16 (4)-(6)

²⁴ Sydney Opera House Trust By-Law 1998 cl16A(1)-(2)

²⁵ Sydney Opera House Trust By-Law 1998 cl16A(2)

²⁶ Sydney Opera House Trust By-Law 1998 cl16A(3)

²⁷ Sydney Opera House Trust By-Law 1998 cl16B

²⁸ Sydney Opera House Trust By-Law cl16C

²⁹ Sydney Opera House Trust By-Law 1998 cl 4A

³⁰ Sydney Opera House Trust By-Law 1998 cl4A(1)(a)

³¹ Sydney Opera House Trust By-Law 1998 cl4A(1)(b)

³² Sydney Opera House Trust By-Law 1998 cl4A(1)(c)

³³ Sydney Opera House Trust By-Law 1998 cl4A(1)(d)

³⁴ Sydney Opera House Trust By-Law 1998 cl4A(2)

ROYAL BOTANIC GARDENS AND DOMAIN

The Trust has a strong degree of control over their lands. Their powers are set out in the *Royal Botanic Gardens and Domain Trust Regulation 2002*. Here are some of the Authorities general powers:

- They have the power to give directions limiting the number of people on Trust lands, closing off any part of Trust lands to the public, charging admission, and imposing other conditions on entrance to Trust lands.
- Land may be reserved by the Trust for any organised activity.¹
- It is an offence to remain on the Gardens at any time when they are not open to the public.²
- It is an offence to erect a tent or other structure, and if warned by a ranger or police officer, you must remove it immediately.³
- It is an offence not to comply with any of these directions, which may be given orally by a Ranger or police officer, or by means of a sign.⁴

General activities that may be prevented at the Royal Botanic Gardens and Domain

- It is an offence to operate a cassette player/ CD player at a volume likely to cause nuisance to anyone, and it is an offence to use a public address system or loudspeaker⁵
- It is an offence to display or distribute any advertisements, signs or posters or other printed matter.⁶

Overall, a police officer or ranger may also give you a direction for the purpose of securing good order and management and enjoyment of the Trust lands. Failure to comply with this direction is an offence.⁷

What's the deal with protest?

It is also an offence to address a public function, public meeting, public demonstration or public gathering at any time in the Botanical Gardens⁸, and before sunrise or after sunset in the Domain.⁹

The maximum penalty for all of the above offences is a fine of \$550.

Are the police or other authorized officers empowered to move me on?

A ranger or police officer may ask you to leave trust lands if you engage in the following acts:

- *enter the Trust lands unlawfully*
- *causes any annoyance or inconvenience to other persons on the Trust lands*

failure to comply with such an order may result in removal by a ranger or police officer.¹⁰

Identification

If a police officer or ranger suspects that you have committed an offence against this act, such as the offences listed above, that designated person may ask for your name and address. This is specified as your full name and address, therefore it is probably not appropriate to provide a nickname.¹¹ If you refuse to give these details you must have reasonable cause, and you must not give false or misleading information.¹² If a police officer or ranger requests this information off you, you must make sure that person has identified themselves as a ranger or a police officer and that a warning has been given that failure to comply with this request is an offence.¹³

endnotes

¹ cl 5 *Royal Botanic Gardens and Domain Trust Regulation 2002*

² cl 18 *Royal Botanic Gardens and Domain Trust Regulation 2002*

³ cl 8 *Royal Botanic Gardens and Domain Trust Regulation 2002*

⁴ cl 7 *Royal Botanic Gardens and Domain Trust Regulation 2002*

⁵ cl 11 *Royal Botanic Gardens and Domain Trust Regulation 2002*

⁶ cl 12 *Royal Botanic Gardens and Domain Trust Regulation 2002*

⁷ cl 15 *Royal Botanic Gardens and Domain Trust Regulation 2002*

⁸ cl 19 *Royal Botanic Gardens and Domain Trust Regulation 2002*

⁹ cl 20 *Royal Botanic Gardens and Domain Trust Regulation 2002*

¹⁰ cl 16 *Royal Botanic Gardens and Domain Trust Regulation 2002*

¹¹ cl 17(1) *Royal Botanic Gardens and Domain Trust Regulation 2002*

¹² cl 17(2) *Royal Botanic Gardens and Domain Trust Regulation 2002*

¹³ cl 17(3)(a)(b) *Royal Botanic Gardens and Domain Trust Regulation 2002*



legal observers

if you need legal assistance or advice on the days of the protest, look out for legal observers, they'll be wearing red t-shirts at the protest and will have contact numbers for legal assistance or call legal observers on 0422 644 363